



Appeal of David J. and Roxana N. Gaffaney

The first issue presented in this appeal is whether appellants were residents of California for the years 1977 and 1978 so as to qualify to use the income averaging provisions of the Revenue and Taxation Code in computing their California personal income tax liability for 1979. The second issue presented in this appeal is whether, assuming appellants were entitled to average their income, their calculations of averageable income were erroneous,

Appellants, husband and wife, appear to have resided in Santa Ana, California, during 1975 and 1976, as their California returns for both these years indicate this address. They then moved to Roanoke, Virginia. It is unclear when this move was made; however, appellants filed in California a nonresident/part-year resident return for 1977 listing a California taxable income of \$1,615 and appellants' W-2 forms for 1977 indicate the appellants' address as Roanoke, Virginia. Appellants have acknowledged that they resided in Roanoke, Virginia, from January 1, 1978, through June 1, 1978. A part-year resident return for calendar year 1978 was apparently filed by the appellants with Virginia's Department of Taxation. In September of 1978 appellants allegedly returned to California and set up a plumbing business. Appellants did not file a 1978 California income tax return.

Appellants filed a state income tax return for the year 1979 and paid a tax of \$2,080. In an amended return filed in 1981, appellants used the income averaging method contained in sections 18241 through 18246 of the Revenue and Taxation Code to recompute their personal income tax liability for 1979. The recomputation resulted in a \$1,894 decrease in appellants' tax liability and this amount was claimed as a refund. Respondent denied appellants' refund claim on the ground that they were not residents of California for the base period years 1977 and 1978. Respondent further contends that even if appellants were entitled to average their income, their calculation of averageable income was erroneous and other calculations contained mathematical errors. Respondent's denial of the claim gave rise to this appeal.

The income averaging provisions in the Revenue and Taxation Code contain a number of specific requirements for eligibility. Revenue and Taxation Code section 18243, subdivision (b), provides that "[f]or purposes of this article, an individual shall not be an eligible individual for the computation year if, at any time

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during such year or the base period, such individual was a nonresident." The term "computation year" is defined in Revenue and Taxation Code section 18242, subdivision (d)(1), as "the taxable year for which the taxpayer chooses the benefits of this article." The term "base period" means the four taxable years immediately preceding the computation year. (Rev. & Tax. Code, § 18242, subd. (d)(2).)

In this case the computation year is 1979 and the base period is made up of the years 1975 through 1978. Appellants have acknowledged that they were living in Virginia and were not in California from January 1, 1978, until September of 1978.

Revenue and Taxation Code section 17014, subdivision (a)(2), defines the term "resident" as "[e]very individual domiciled in this state who is outside the state for a temporary or transitory purpose." Appellants appear to rely on subdivision (a)(2) of section 17014 in contending that they were domiciliaries of California during 1977 and 1978 and that their absence from the state was for a temporary or transitory purpose.

The findings of the Franchise Tax Board in assessing taxes are prima facie correct. (Todd v. McColgan, 89 Cal.App.2d 509 (201 P.2d 4141 (1949)).) Appellants, therefore, have the burden of producing sufficient evidence to overcome the resulting presumption of correctness. (Appeal of Joseph J. and Julia A. Battle, Cal. St. Bd. of Equal., April 5, 1971; Appeal of Herbert and Darlene B. Hooper, Cal. St. Bd. of Equal., Feb. 26, 1969.) This presumption is not overcome by unsupported statements of the taxpayer. (Appeal of Robert C., Deceased, and Irene Sherwood, Cal. St. Bd. of Equal., Nov. 30, 1965.)

Even assuming for purposes of this discussion that appellants were domiciliaries of this state, we cannot conclude that appellants were outside the state for temporary or transitory purposes. Appellants have provided no evidence that they had any substantial connections with California during their absence from the state or that their purpose for leaving California was only temporary. The fact that appellants returned to California after a brief absence does not require the conclusion that their purpose for leaving was transitory in character. (Appeal of Christopher T. and Boda A. Rand, Cal. St. Bd. of Equal., April 5, 1976.)

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For the above reasons we conclude that appellants were outside this state for other than temporary **purposes and** therefore ceased to be California residents until their return. Accordingly, we sustain respondent's action. Because of this decision, it is unnecessary to address respondent's alternative argument **concerning** erroneous calculations.

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O R D E R

Pursuant to the views expressed in the opinion of the board on file in this proceeding, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to section 19060 of the Revenue and Taxation Code, that the action of the Franchise Tax Board in denying the claim of David J. and Roxana N. Gaffaney for refund of personal income tax in the amount of \$1,894 for the year 1979, be and the same is hereby sustained.

Done at Sacramento, California, this **13th** day
of **December**, 1983, by the State Board of Equalization,
with Board Members Mr. Bennett, Mr. Collis, Mr. Dronenburg
and Mr. Nevins present.

William M. Bennett _____, Chairman
Conway H. Collis - - _____, Member
Ernest J. Deeney, Jr _____, Member
Richard Nevins _____, Member
_____, Member